STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 13, 2011

In the Matter of J. E. M. WINTERS, Minor.

No. 300104
Muskegon Circuit Court
Family Division
LC No. 08-037296-NA

In the Matter of J. E. M. WINTERS, Minor.

No. 300105
Muskegon Circuit Court
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Before: MARKEY, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

In these consolidated appeals, respondents T. Winters and J. Johnson each appeal by right from the trial court's order terminating their parental rights to the minor child. We affirm.

Both respondents previously had their parental rights to other children terminated. Respondent Winters's parental rights to her other children were terminated just days before the child at issue in this case was born. Both parents consented to the termination of their parental rights to the child under MCL 712A.19b(3)(i).

In Docket No. 300104, respondent Winters contends that her plea was not understandingly and knowingly made due to ineffective assistance of counsel. "[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re HRC*, 286 Mich App 444, 458; 781 NW2d 105 (2009). Because respondent did not raise this issue in the trial court, our review is limited to errors apparent from the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

A respondent in a child protective proceeding has a due process right to counsel, which includes the right to the effective assistance of counsel. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). To establish ineffective assistance of counsel, respondent must show that "(1) [her] trial counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms and (2) there is a reasonable probability that, but for

counsel's error, the result of the proceedings would have been different. Counsel is presumed to have provided effective assistance, and [respondent] must overcome a strong presumption that counsel's assistance was sound trial strategy." *People v Horn*, 279 Mich App 31, 37-38 n 2; 755 NW2d 212 (2008) (citations omitted). Respondent also has the burden of establishing the factual predicate of her claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Respondent Winters consented to the termination of her parental rights to the child under § 19b(3)(i). Her attorney advised the trial court that although respondent was consenting to the termination of her parental rights, she was hopeful that the child would be adopted by the relative with whom she had been placed. Respondent contends that this statement led her to believe that termination would be contingent on her right to assist in placing the child for adoption. The record does not support this claim. The only way for a parent to become involved in the adoption process is through a direct placement adoption, in which the parent grants custody of the child to a prospective adoptive parent and consents to adoption. See MCL 710.23a; MCL 710.23d; MCL 710.43; MCL 710.44. This case did not involve a direct placement adoption, and there is no basis in the record for concluding that respondent could have believed that she would be able to arrange the child's adoption herself, or that her plea was contingent on such a right, especially considering that counsel stated only that respondent hoped that the child would be adopted by respondent's relative but that there was no agreement. Moreover, the trial court expressly advised respondent that it could not guarantee that the respondent's relative would adopt the child. The record does not support a finding that trial counsel made a serious error simply by raising the adoption matter.

In Docket No. 300105, respondent Johnson contends that the trial court erred in accepting his plea, but does not explain the basis for this claim; consequently, this issue may be considered abandoned. *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008). We note that because respondent did not move to withdraw his plea in the trial court, any claim of error related to the plea proceeding is unpreserved. See *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989). Therefore, "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007), aff'd 480 Mich 19 (2008). The record indicates that not only did respondent Johnson consent to termination of his parental rights, he also admitted that he understood the allegation against him, i.e., "that the parental rights to one or more siblings of the child have been terminated due to serious, chronic neglect and prior attempts to rehabilitate the parents have been unsuccessful," see MCL 712A.19b(3)(i), that this allegation was true, and that "it would be in the best interest of the child for [his] rights to be terminated and the child to somehow be adopted within the family[.]" From such admissions, the trial court could properly find that one or more allegations in the petition were true and established a basis for termination and that termination was in the child's best interests. Cf. MCR 3.977(E); *In re Toler*, 193 Mich App 474, 475, 477; 484 NW2d 672 (1992). We find no error, plain or otherwise, in the trial court's decision to accept respondent Johnson's plea to the termination petition.

We affirm.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Pat M. Donofrio